

Analysis of Halal Standards in Disputes on Chicken Meat Imports Between Indonesia and Brazil at the World Trade Organization (WTO)

Muhammad Reza Syariffudin Zaki*, Duta Imanuel Sitorus, Ramadhani Syahputra

Business Law Department

Binus University

Jakarta, Indonesia

*muhammad.zaki@binus.ac.id, duta.sitorus@binus.ac.id, ramadhani.syahputra@binus.ac.id

Abstract—On October 16, 2014, Brazil filed a lawsuit through the WTO on the basis that Indonesia had violated the principle of free trade (Free Trade Agreement). Brazil believes that there are provisions and procedures for imports that have prevented its product, namely chicken meat, from entering the Indonesian market. This research is entitled "Analysis of Halal Standards in Disputes on Chicken Meat Imports Between Indonesia and Brazil at the World Trade Organization (WTO)", using normative legal research methods through legislation and case approaches. The formulation of the problem in this research is: Does the halal standard conflict with articles XI and XX of the GATT 1994 or WTO provisions in general? So it can be concluded that the formulation of this problem is that Indonesia's halal standard policy does not violate the XI and XX GATT 1994.

Keywords—WTO, Indonesia, Brazil, chicken

I. INTRODUCTION

Indonesia faces challenges in international trade due to objections from Brazil in terms of Indonesia's chicken meat import policy which is considered detrimental to Brazil as a fellow WTO member country [1].

Indonesia itself has ratified Law Number 7 of 1994 concerning Ratification of the Agreement on Establishing The World Trade Organization (WTO) which requires Indonesia to comply with all the results of the agreement in the WTO forum [2]. Indonesia is legally bound to implement the WTO Agreement, including the provisions of Trade Remedies, in its national law. Indonesia as a WTO member country is given the freedom to create and apply its own national legal procedures which automatically must be consistent with WTO provisions [3].

But on the other hand, the role of the State in cases of international trade disputes through the World Trade Organization is a diplomatic task, where diplomacy is carried out before and after it is made, so Indonesia has the right not to be subject to rules made in other countries. The prospect of resolving trade disputes between Indonesia and other countries

is that Indonesia can win a dispute from a country that violates international law through violations of TRIPS, TBT, and GATT [4].

In the legal facts that occur, Indonesia in carrying out international trade activities has faced disputes with other countries, namely the dispute on the import of chicken meat between Indonesia and Brazil which is based on the security policy of the poultry sector. Since 2009, Brazil has been trying to open up market access for poultry products to Indonesia, especially chicken and chicken products, but Brazil believes that there are provisions and procedures that have been put in place that have prevented these products from entering the Indonesian market. Indeed, the main factor that must be considered is halal certification, the purpose of which is not based on efforts to prohibit or even limit the import of chicken meat from Brazil or other countries, but to ensure that imported products or goods have gone through the halal certification test stage for consumers. Consumers feel at ease and comfortable when consuming it. The other inhibiting factors are the positive list, usage requirements, delay in approval of sanitation requirements, general prohibition on the import of chicken meat and chicken products, and direct transportation requirements [5]. In international trade, it is regulated that a trade restriction between WTO member countries must be based on tariffs or related to security from disease or health.

Brazil believes that import restrictions in Indonesia violate various WTO rules, including: *Agreement on Sanitary and Phytosanitary Measures*, *Agreement on Technical Barriers to Trade*, *Agreement on Agriculture*, *the Agreement on Import Licensing Procedures*, and *Agreement on Preshipment Inspection*. Based on WTO rules, Indonesia has 60 days to resolve the issue with Brazil without the intervention of the global organization. After that, Brazil can escalate the case by establishing a panel through the WTO to try Indonesia. A common problem is the identification and communication of trade barriers for governments. In this context, the main issue is how to ensure that the government is made aware of the action (as a trade barrier) and to judge that it violates the WTO

agreement [6]. In addition, Part II also discusses various technical issues related to the implementation of measures at the border. Articles XX and XXI discuss exceptions to the 1994 GATT, such as general exceptions and exceptions for security reasons [7].

II. METHODOLOGY

The methodology used in this research is normative, with two legal sources, namely primary and secondary legal sources. The primary sources used in the form of trade rules, regulations and the secondary sources taken in the form of books, journals, and online. The approach for this research are statutory approach and case study approach to find an appropriate conclusion.

A. Research of Problem

The following is the formulation of the problem from this research:

- Does the halal standard conflict with articles XI and XX of the GATT 1994 or WTO provisions in general?

B. Research Benefits

This research is expected to encourage the development of Indonesian sovereignty in international trade. The author hopes that this research will provide benefits for readers to increase knowledge about the role of halal standards in international trade. So, it could impact for the government's policy when implementing the halal standard in doing international trade without breaching any WTO rules.

III. DISCUSSION

As part of the World Trade Organization (WTO), Indonesia has been committed from the beginning to support trade between countries (transborder trade) which is carried out with the principles of expediency, fairness and free and active, this is also reflected in Indonesia's attitude towards the problem of importing chicken meat between Indonesia and Brazil. Indeed, Indonesia does not seek to prohibit or restrict imports of chicken meat or chicken products from anywhere, including Brazil. Indonesia only ensures that chicken and chicken products are safe, healthy, and halal [8]. The position of halal certification in the national legal system in Indonesia has a central position, because halal certification is contained in Law no. 33 of 2014 concerning Halal Product Guarantee.

Halal products which in the legal system are integrated into one legal system, namely legal substances that have the same legal force and legal certainty, namely binding and this is an effort to protect consumers who are Muslim in consuming goods and or services [9]. explore the consequences of halal consumerism on developments in Indonesian democracy. I accomplish this by elaborating on the rise of halal consumerism and how it panders to existing social in securities among middle-class Muslims [10]. It is also the largest exporter of halal chicken, with about 40 percent of the world's

halal chicken market. The US and Brazil dominate poultry exports due to their low input costs (they are exporters of corn and soybeans, for example), whereas Indonesia imports most of its feed ingredients and has much higher costs [11].

In regards of necessity testing, the panels based the weighing and balancing on all factors of the "necessity test" under Article XX (d). The goal is to secure compliance with laws that are not in line with the provision of GATT. It is later found that the measure was not justified and did not cease to exist by the virtue of the enactment of the third set of legal instruments and continues to apply in the same manner [12]. This can certainly be understood as the government's effort to ensure that every imported product that enters a country has met the standards that have been set. that in fact it does not conflict with the ideals of the WTO contained in the WTO principle, namely the Most Favored Nation (MFN) which states that every WTO member country must be treated equally. The fact that the regulation that Brazil claims has made it difficult for their chicken meat products to enter Indonesia is of course unfounded, because in fact these regulations are also applied to other countries. In contrast, non-tariff measures (NTM) have attracted global attention, due to their complex nature. Tariffs, quotas and subsidies are measurable trade policy instruments whose causes and effects are generally direct [13].

GATT 1994 to justify imports that are considered contradictory by Brazil, must be scientifically proven to be a "health risk". In this case, Indonesia's efforts to demonstrate the existence of this "health risk" is carried out by submitting scientific evidence and relevant standards [14]. Therefore, Indonesia's actions are solely to ensure that imported products, especially chicken meat from Brazil, are still good and meet the specified qualifications. This also does not mean that Indonesia discriminates against imported products by complicating the entry policy of imported products.

The Chicken Meat Import dispute between Indonesia and Brazil is a shock therapy for Indonesia, considering that Brazil has indirectly intervened in Indonesia's domestic regulations, especially on import policies. Every WTO member country that agrees is obliged to implement the 1994 GATT in its domestic law. Indonesia has carried out a protectionism against the country's self-esteem [15].

Article XI of the GATT 1994 regulates the prohibition of quantitatively prohibiting export and import products. Meanwhile, according to article XX (a) of the GATT 1994, it provides an opportunity for WTO member countries to waive the principle of non-discrimination in trade related *public morals*. In this case, the halal certification applied by the Indonesian government to all goods and services imported into Indonesian jurisdictions is to provide health, safety, and product halal guarantees for consumers in Indonesia. Barriers to trade Article XX (b) of the GATT 1994 in applying SPS protection must use scientific principles and should not be made without sufficient scientific evidence as standard legislation policy. This is an effort to protect the law so that

there is a guarantee of safety and health for imported goods and services, including when an infectious disease is found to be a disease that can be used as an excuse to prohibit contaminated products from entering a country [16].

Philip I Levy divides the principles of protectionism into three categories, namely *Intentional Protectionism* is protection in the most transparent category of protectionism and is stated explicitly in a country's policy, in the form of applying import tariffs, export subsidies, and quotas. This category is often found in the economic policies of developing countries for manufactured commodities and agricultural products, and is not recommended for educational needs and technology development because it will only harm the country itself [17]. So in this case, the halal certification made by the Indonesian government cannot be considered to violate Articles XI and XX of the 1994 GATT as questioned by Brazil in the dispute on the import of chicken meat.

IV. CONCLUSIONS

Article XI of the GATT 1994 regulates the prohibition of quantitatively prohibiting export and import products. Meanwhile, according to article XX (a) of the GATT 1994, it provides an opportunity for WTO member countries to waive the principle of non-discrimination in trade related public morals. In this case, the halal standard applied by the Indonesian government to all goods and services imported into Indonesian jurisdictions is to provide health, safety, and product halal guarantees for consumers in Indonesia. Barriers to trade Article XX (b) of the GATT 1994 in applying SPS protection must use scientific approach and should not be made without sufficient scientific evidence as standard legislation policy. This is an effort to protect the law so that there is a guarantee of safety and health for imported goods and services, including when an infectious disease is found to be a disease that can be used as an excuse to prohibit contaminated products from entering a country. So in this case, the halal standard made by the Indonesian government cannot be considered to violate Articles XI and XX of the 1994 GATT as questioned by Brazil in the dispute on the import of chicken meat.

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